

**For Discussion
on 12 July 2011**

LegCo Panel on Food Safety and Environmental Hygiene

Proposed Pesticides (Amendment) Bill

Purpose

This paper seeks Members' views on the proposed Pesticides (Amendment) Bill to fulfill the obligations of the Hong Kong Special Administrative Region (HKSAR) under the Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention). The opportunity will be taken to improve certain provisions of Pesticides Ordinance (Cap. 133).

Background

Existing Control of Pesticides

2. The Administration attaches importance to the safe and proper use of pesticides. At present, the import, manufacture, sale and supply of pesticides in Hong Kong are regulated by Cap. 133. The Agriculture, Fisheries and Conservation Department (AFCD) is responsible for enforcing the relevant provisions. All pesticides intended for sale in Hong Kong must be registered with the Director of Agriculture, Fisheries and Conservation (DAFC). Under section 4 of Cap. 133, DAFC shall maintain a register of pesticides in which -

- (i) Part I contains a list of all pesticides which are in a form ready for immediate use without going through any treatment or process and which are for general domestic use; and
- (ii) Part II contains a list of all other pesticides. In practice, these are usually for professional and horticultural applications.

3. In practice, AFCD would only register pesticides categorised as slightly or moderately hazardous by the World Health Organisation (WHO), and would impose retail sale restrictions on the formulation and concentration of the pesticides. Pesticides categorised as extremely hazardous by WHO are not allowed to be registered. AFCD regularly reviews all the registered pesticides, taking into account the adverse impact posed to the environment and human beings.

4. Apart from registration, DAFC exercises strict control on pesticides through a licence and permit system under Cap. 133. For registered pesticides, under section 7(1) of Cap. 133, except with a licence issued by DAFC, no person shall import, manufacture, sell or supply such pesticides.

5. As regards unregistered pesticides, under section 8(1) of Cap. 133, except with a permit, no person shall-

- (a) import into or cause to be imported into Hong Kong;
- (b) manufacture;
- (c) sell or offer or expose for sale;
- (d) supply or offer to supply; or
- (e) have in his possession,

any unregistered pesticide.

Public consultation in 2007

6. The then Health, Welfare and Food Bureau conducted a public consultation exercise in 2007 on a package of legislative proposals to amend Cap. 133. Apart from fulfilling HKSAR's obligations under the Stockholm Convention and the Rotterdam Conventions (the two Conventions), the proposals then also aimed to introduce a product registration system and a user control scheme. This Panel was consulted on the proposals at the meeting on 13 February 2007. Noting the impact of the proposals on the trade, Members urged the Administration to take into consideration the views collected and to maintain a balance between the interests of the trade and the public.

Product registration system

7. Under the then proposed product registration system, the register maintained by DAFC (paragraph 2 above) would be divided into two types of pesticide products, namely, general and restricted pesticides. The general pesticides would be available to the general public for domestic and general use while the restricted pesticides would only be available to trained individuals under the user control scheme (see paragraph 9 below) with authorization from AFCD. Under the product registration system, pesticide suppliers would need to provide detailed data reflecting the level of toxicity, persistence, use pattern, potential environmental and health hazards of pesticide products.

8. During the public consultation in 2007, many local pesticide suppliers who imported pesticide products for sale in Hong Kong expressed that they would not be able to provide the required technical data for product registration which were only available to the overseas manufacturers. As such, they would not be able to register their pesticide products under the proposed product registration system. Given our heavy reliance on imported pesticide products, traders were worried that the introduction of a product registration system would unintentionally result in a dramatic drop in the number of pesticide products available in the local market.

User Control Scheme

9. Under the then user control scheme, it was proposed to regulate the use of pesticides by –

- (i) licensing pesticide application service provider(i.e. pest control companies);
- (ii) requiring pesticides applicators to acquire necessary training and be registered; and
- (iii) restricting the accessibility of restricted pesticides to trained individuals.

10. During the public consultation in 2007, we received the following views –

- (i) there was concern that the licensing requirement might result in small pest control companies being driven out of business due to high operational costs; and
- (ii) the existing pesticide applicators were concerned that a substantial number of them would fail to be registered as the training requirement was too high; and
- (iii) there was also concern over the availability of suitable training courses for farmers at old age and individuals of low education level.

An Improved Approach

11. Our policy objective remains to ensure the safe and proper use of pesticides. Taking into account the views received, the effectiveness of the current registration system under Cap. 133 as well as the recent development in the trade, we have decided to adopt an improved approach as follows to achieve our policy objective –

- (i) AFCD will continue to ensure that pesticides which are registered are safe for use by the public. For unregistered pesticides, AFCD could make use of the permit system so that only trained professionals are allowed to handle them. The effectiveness of the current registration system in ensuring safe and proper use of pesticides is borne out by evidence. According to a recent 3-year study conducted by the Department of Health, cases of minor incidents relating to the use of pesticides are far and few in between;
- (ii) AFCD will also keep up its effort in assisting the trade to enhance their standard of using pesticides –
 - (a) devising suitable training syllabus for pesticide applicators. In this connection, we note that the percentage of pest control workers who have received training in recent years has increased from 10% in 2007 to 59% in 2010;
 - (b) in collaboration with the trade, drawing up Codes of Practice for the sectors of pest control companies and workers, sports turf management personnel and local farmers; and

- (c) promoting public awareness on the safe and proper use of pesticides through educational leaflets and information on website.

12. We believe that the improved approach in paragraph 11 would more aptly meet the need to protect the public from unsafe use of pesticide on the one hand, while catering to the updated situation of the trade on the other. This improved approach does not require legislative amendment to be made.

The Stockholm Convention and the Rotterdam Convention

13. For the purpose of protecting human health and the environment, the two Conventions deal with hazardous chemicals, some of which are pesticides or used as intermediates for manufacture of pesticides. The Stockholm Convention aims to restrict the manufacture, use, export and import of persistent organic pollutants¹ with a view to eliminating them. The Rotterdam Convention aims to regulate international trade of target hazardous chemicals through a ‘prior informed consent procedure’².

14. The Stockholm Convention, which entered into force on 17 May 2004, covers 22 chemicals, of which 15 are pesticides³. The Central People’s Government has extended the Stockholm Convention to HKSAR since 11 November 2004. The Rotterdam Convention, which entered into force on 24 February 2004, covers 25 pesticides, four severely hazardous pesticide formulations and 11 non-pesticide industrial chemicals. It became applicable to the People’s Republic of China on 20 June 2005 and was extended to HKSAR on 26 August 2008.

15. At present, all pesticides under the two Conventions are unregistered pesticides in Hong Kong. Unless with a permit issued by DAFC under Cap. 133, no person shall import, manufacture, supply, sell or possess any unregistered pesticides. Hence the trade volume of the concerned pesticides under the two Conventions is extremely low. In the past five years, there were only five transshipment cases.

¹ Persistent organic pollutants are a group of compounds that possess toxic properties, resist degradation, bioaccumulate and are transported through air, water and migratory species, across international boundaries and deposited far from their place of release, where they accumulate in terrestrial and aquatic ecosystems.

² The exporting party is required to obtain the consent of the importing party before exporting pesticides or chemicals under control.

³ Of the said 15 pesticides, six were recently added and the People’s Republic of China has yet to accede to their inclusion. Under the circumstances, the legislative amendments presently introduced would, as far as the Stockholm Convention is concerned, only deal with nine pesticides.

16. According to legal advice, there is a need to introduce suitable amendments to Cap. 133 to fulfill HKSAR's obligations under the two Conventions⁴.

Proposed Pesticides (Amendment) Bill

17. To fulfill Hong Kong's obligation under the two Conventions, we propose to introduce the proposed Pesticides (Amendment) Bill to enable DAFC to exercise his discretionary powers under Cap. 133 in a way consistent with the obligations under the two Conventions.

18. The pesticides under the two Conventions would be specified in a new Schedule to Cap.133 ("scheduled pesticides"), which may be updated by the Secretary for Food and Health (SFH) from time to time. SFH shall take into account the criteria specified in the two Conventions when prescribing or removing pesticides as "scheduled pesticides".

19. Anyone who wishes to import, manufacture, sell, supply, possess, export, use and tranship (except air transshipment cargo as defined in section 2 of the Import and Export Ordinance (Cap. 60))⁵"scheduled pesticides" must obtain prior approval of DAFC through an application for a permit.

20. The two Conventions provide for certain exemptions. Following the two Conventions, we propose to provide that Cap. 133 shall not apply to "scheduled pesticide" in quantities not likely to affect human health or the environment, which is only for use in laboratory-scale research, chemical analysis or as reference standards. Along the same vein, we further propose to extend such exemption to all pesticides. Up till now, nor licence has been granted, or permit issued, to pesticides for such laboratory research use. Prescribing such exemption in the law would be beneficial to scientific research without affecting human health.

⁴ Upon future enactment of the amendment legislation to Cap 133, the regulation of pesticide-related hazardous chemicals covered by the two Conventions would have been catered for. For non-pesticide related hazardous chemicals under the two Conventions, their import, export, manufacture and use are already regulated under the Hazardous Chemicals Control Ordinance (Cap 595) which is enforced by the Environmental Protection Department and which commenced full operation in 2008.

⁵ "air transshipment cargo" (航空轉運貨物) means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of the Hong Kong International Airport. The policy intention is to treat air transshipment cargoes as cargoes in transit which are not covered by the proposed amendments.

21. The opportunity will be taken to improve certain provisions of Cap.133 including -

- (i) replacing the Chief Executive by the Administrative Appeals Board, which is an independent statutory body established under the Administrative Appeals Board Ordinance (Cap. 442), as the appeal hearing body on any decision of DAFC under Cap. 133. This would place the appeal hearing function to an independent body consisting entirely of non-officials;
- (ii) updating section 15(3) of Cap.133 on enforcement power; and
- (iii) removing the obsolete ribbing requirement⁶ of pesticide containers as a trade facilitation measure. As ribs and grooves have become a common feature of food containers, such requirement no longer serves any useful purpose in distinguishing the pesticide from other non-pesticide products.

Trade Consultation

22. To gauge the views of the trade on the above proposed amendments, AFCD held three briefings for the stakeholders and five meetings to specifically consult five relevant organisations, namely, the Pest Control Personnel Association, the Pest Control Management Association, South China Turf Managers Association, Hong Kong Cleaning Association and the Federation of Vegetable Marketing Co-operative Societies Ltd in May and June 2011. All five organisations supported the proposed amendments and the improved approach as outlined in paragraph 11. As the pesticides under the two Conventions are not registered in Hong Kong, we anticipate that the impact on the trade would be minimal.

⁶ Regulation 11(1)(c)(ii) of the Pesticides Regulations (Cap.133A) provides among other things that a licensee shall not sell, or offer or expose for sale, or supply, either by retail or in a form ready for sale or supply by retail any registered pesticide except in a container which is made of glass or plastic, the outer surface being, in the case of a container with a capacity of not more than 2 litres, fluted vertically with ribs or grooves recognizable by touch.

Way Forward

23. Subject to Members' views, we would conduct another round of consultation with the stakeholders before introducing the proposed Pesticides (Amendment) Bill into the Legislative Council.

Advice Sought

24. Members' views are invited on the above proposals.

**Food and Health Bureau
Agriculture, Fisheries and Conservation Department
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